(11)

Docket No. 91-913

IN THE

Supreme Court of the United States

October Term, 1991

JOHN R. PATTERSON, Trustee,

Petitioner,

v.

JOSEPH B. SHUMATE, JR.,

Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF FOR RONALD J. WYLES AND REGINA L. WYLES AS AMICUS CURIAE IN SUPPORT OF RESPONDENT

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MOTION OF
RONALD J. WYLES AND REGINA L. WYLES
FOR LEAVE TO FILE BRIEF AS
AMICUS CURIAE IN SUPPORT OF RESPONDENT

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RONALD J. WYLES AND REGINA L. WYLES
FOR LEAVE TO FILE BRIEF AS
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Ronald J. Wyles and Regina L. Wyles (collectively "the Wyles") respectfully move for leave to file a Brief as amicus curiae in this case in support of respondent, as provided by Rule 37 of the Rules of this Court. The written consent of the attorney for respondent has been obtained. The consent of the attorney for petitioner was requested but refused.

The Wyles are the appellees in a case now pending before the United States Court of Appeals for the Fourth Circuit. (Dean W. Sword, Jr., Trustee v. Ronald J. Wyles and Regina L. Wyles, Record No. 91-1633). The issue in the Wyles' case is identical to the issue before the Court in this case: whether the Employee Retirement

Insurance Security Act of 1974 ("ERISA") constitutes "applicable nonbankruptcy law" under 11 U.S.C. § 541(c)(2) so that the non-alienation and assignment provisions contained in an ERISA and Internal Revenue Code qualified pension or profit sharing plan exclude a debtor's interest in the plan from the debtor's bankruptcy estate. In both Shumate's and Wyles' cases, debtors' interests in ERISA-qualified plans have been held exempt from inclusion in their bankruptcy estates under the decision of the Fourth Circuit in In re Moore, 907 F.2d 1476 (4th Cir. 1990). Because of the great similarity between this case and the Wyles' case, the Fourth Circuit entered an Order on September 26, 1991 holding the Wyles' case in abeyance pending this Court's disposition of this case. Thus, the decision in this case will control the outcome in the Wyles' case.

While the petitioner and respondent will concentrate on the peculiar facts of their own case, the issue presented by this case is also of monumental importance to debtors, trustees, the public policy set forth by Congress in enacting ERISA and the general public, all being concerned with the funding of retirement for citizens of the United States. The supremacy of ERISA over state law in the area of employee retirement benefits covered by ERISA depends on the result in this case. The general public must know whether Congress intended ERISA protection to lapse when a beneficiary of an ERISA plan files bankruptcy. The Brief on behalf of the Wyles addresses these broader concerns. The Wyles emphasize the statutory framework of ERISA and the Bankruptcy Code and requests this Court to examine the practical impact on retirement benefit issues that the result of this case

would have. The Wyles believe that their Brief would assist this Court in making its decision and in considering the broader questions affecting the employee retirement benefits of all citizens of the United States.

The Brief on behalf of the Wyles requests this Court to affirm the Fourth Circuit's decision in this case and supports the position of Joseph B. Shumate, Jr.

For the foregoing reasons, the Wyles respectfully request that this Motion be granted.

Respectfully submitted,

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BRIEF FOR RONALD J. WYLES AND
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INTEREST OF RONALD J. WYLES AND REGINA L. WYLES

The interest of Ronald J. Wyles and Regina L. Wyles (collectively "the Wyles") is set forth in the Wyles' motion for leave to file this Brief amicus curiae in support of the position of Joseph B. Shumate, Jr. ("Shumate").

SUMMARY OF THE ARGUMENT

I. ERISA constitutes "applicable nonbankruptcy law" under § 541(c)(2) of the Bankruptcy Code. Nothing in the clear and unambiguous language of this code section suggests that the phrase "applicable nonbankruptcy law" refers exclusively to state law, much less to state spendthrift trust law. When Congress intended to refer to state law, it did so explicitly in other areas of the

Bankruptcy Code. Furthermore, the phrase "applicable nonbankruptcy law", as used in other portions of the Bankruptcy Code, clearly refers to other federal laws. Because of this clear language there is no need to examine the legislative history of § 541(c)(2). Even so, the legislative history does not reflect an intention to exclude ERISA as "applicable nonbankruptcy law."

II. The Fourth Circuit's inclusion of the ERISA transfer restrictions within the meaning of the term "applicable nonbankruptcy law" as used in § 541(c)(2) fulfills Congress' intent regarding the protection of retirement benefits for citizens of the United States. The Fourth Circuit in this case harmonized ERISA and the Bankruptcy Code in a cohesive manner which gives full effect to both. Accordingly, if the ERISA non-alienation provisions are enforceable against general

creditors, they are enforceable against bankruptcy trustees. That the beneficiary may have potential control over the plan does not affect this result. Congress' policy choice to safeguard retirement benefits for ERISA plan beneficiaries must be upheld, even if the policy choice prevents others from securing relief for financial obligations owed them.

The decision by the Fourth Circuit in this case also preserves the tax-exempt status of ERISA-qualified plans by preventing creditors and bankruptcy trustees from obtaining access to plan benefits. It also ensures uniform treatment of retirement benefits throughout the United States by ensuring the supremacy of ERISA over state law and preventing state spendthrift law from nullifying the non-alienation provisions of ERISA. Finally, excluding ERISA plan interests from bankruptcy estates encourages

closely held corporations and small businesses to place pension assets in such plans. This implements Congress' intent to guaranty workers a defined pension benefit on retirement by protecting retirement benefits from others.

ARGUMENT

Section 541 of the Bankruptcy Code requires that all beneficial ownership interests of a debtor be included in the bankruptcy estate unless the interest contains "[a] restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable nonbankruptcy law". Id. § 541(c)(2) (emphasis added). The Courts of Appeals for the Third, Fourth, Sixth and Tenth Circuits have all held that the Employment Retirement Insurance Security Act of 1974 ("ERISA") constitutes

"applicable nonbankruptcy law" and that an interest in a qualified ERISA pension or profit sharing plan is exempt from a bankruptcy estate under 11 U.S.C. § 541(c)(2). See Velis v. Kardanis, 949 F.2d 78 (3rd Cir. 1991); In re Moore, 907 F.2d 1476 (4th Cir. 1990); In re Lucas, 924 F.2d 597 (6th Cir.), cert. denied, 111 S.Ct. 2275 (1991); and In re Harline, 950 F.2d 669 (10th Cir. 1991). The Fourth Circuit's decision in this case was correctly based on the sound reasoning of these cases and this Court should affirm to give effect to the clear meaning of the language of §541(c)(2) of the Bankruptcy Code.

I. THE PHRASE "APPLICABLE NONBANKRUPTCY LAW" AS USED IN § 541(c)(2) APPLIES TO ERISA

A. The Language Of § 541(c)(2) Is Clear And Unambiguous In That It Refers to Both Federal And State Law.

The Fifth, Eighth, Ninth and Eleventh Circuits have held that a debtor's

interest in an ERISA-qualified plan is excluded from his bankruptcy estate only if the plan qualifies as a valid spendthrift trust under state law. In re Goff, 706 F.2d 574 (5th Cir. 1983); In re Graham, 726 F.2d 1268 (8th Cir. 1984); In re Daniel, 771 F.2d 1352 (9th Cir. 1985), cert. denied, 475 U.S. 1016, 106 S.Ct. 1199, 89 L.Ed.2d 313 (1986); and In re Lichstrahl, 750 F.2d 1488 (11th Cir. 1985). These decisions rely on the legislative history of § 541(c)(2) which revealed Congress' desire to continue to exclude state-recognized spendthrift trusts. See Harline, supra, at 673. The reliance on legislative history, however, is inappropriate. Harline, at 674, Moore, supra, at 1478-1479.

In the absence of a clearly expressed legislative intention to the contrary, the language of the statute itself

must ordinarily be regarded as conclusive in determining its meaning. Burlington Northern R.R. v. Oklahoma Tax Commissioner, 481 U.S. 454, 461, 107 S.Ct. 1855, 1860, 95 L.Ed.2d 404 (1987) (citations omitted). Unless exceptional circumstances dictate otherwise, when the terms of a statute are unambiguous, judicial inquiry is complete. Id. Under this principal, the Third, Fourth, Sixth and Tenth Circuits have all found that the language of § 541(c)(2) is clear and unambiguous. See Harline, supra, at 674, Lucas, supra, at 600-601, Moore, supra, at 1477, and Velis, supra, at 81. In Moore, the Fourth Circuit held:

> Applicable non-bankruptcy law means precisely what it says: all laws, state and federal, under which a transfer restriction is enforceable. Nothing in the phrase "applicable nonbankruptcy law" or in the remainder of § 541(c)(2) suggests that the phrase refers

> exclusively to state law much less to state spendthrift trust law.

Moore, at 1477.

The Fourth Circuit based its conclusion in Moore on a number of factors. First, other provisions of the Bankruptcy Code indicate that, when the Congress intended to specifically refer to state law, it did so explicitly. Moore, at 1478. For example, 11 U.S.C. § 109(c)(2) limits Chapter 9 filings to entities authorized to be such debtors under "State law"; 11 U.S.C. §§ 522(b)(1) and (2) ties certain debtor's exemptions to "State law that is applicable"; and 11 U.S.C. § 523(a)(5) denies discharge of any debt for support pursuant to an order "made in accordance with State or territorial law." Id. Had Congress intended § 541(c)(2) to apply only to state spendthrift trusts, the term "spendthrift trust" would have appeared in the statute

rather than the broad phrase "applicable nonbankruptcy law." In re Ralstin, 61 B.R. 502, 503 (Bankr. D. Kan. 1986).

Secondly, an interpretation of "applicable nonbankruptcy law" to include both federal and state law is consistent with Congress' use of the same term in other sections of the Bankruptcy Code. In 11 U.S.C. § 101(56) it used the phrase "applicable nonbankruptcy law" to refer to federal laws concerning trade secrets, patents and plant varieties. Harline, supra, at 674. In addition, courts have held that the phrase "applicable nonbankruptcy law" in §§ 108(a), (b) and (c) of the Bankruptcy Code refers to federal law. Harline, supra, citing Eagle-Picher Industries, Inc. v. United States, 937 F.2d 625, 639-40 (D.C. Cir. 1991) (Federal Tort Claims Act as "applicable nonbankruptcy law" under § 108(b)); In re Brickley, 70 B.R.

113, 115-116 (Bankr. 9th Cir. 1986) (IRC statute of limitation, 26 U.S.C. §6503, as "applicable nonbankruptcy law" under § 108(c)); Motor Carrier Audit & Collection Co., a Division of Delta Traffic Serv., Inc. v. Lighting Prods., Inc., 113 B.R. 424, 425-426 (N.D. Ill. 1989) (Interstate Commerce Act as "applicable nonbankruptcy law" under § 108(a)); and Eisenberg v. Feiner, (In re Ahead by A Length, Inc.), 100 B.R. 157, 162 (Bankr. S.D. N.Y. 1989) (RICO as "applicable nonbankruptcy law" under § 108(a)).

Accordingly, narrowly interpreting §541(c)(2) to only include state spendthrift law would be inconsistent with uses of the identical phrase throughout the Bankruptcy Code. Because words are presumed to have the same meaning in all subsections of the same statute, it would be incongruous to construe identical phrases in a single comprehensive

statute differently. Moore, at 1478 citing Morrison-Knudsen Constr. Co. v. Director, OWCP, 461 U.S. 624, 633, 103 S.Ct. 2045, 2050 76 L.Ed.2d 194 (1983).

Finally, even were legislative history relevant, the Fourth Circuit found it inconclusive. Moore, at 1479. The legislative history reveals an express desire to preserve protection of state spendthrift trusts under bankruptcy law, but there is no express rejection of federal law including ERISA. See, H.R. Rep. No. 595, 95th Cong., 2d Sess. 369 (1977), reprinted in 1978 U.S.Code Cong. & Admin. News pp. 5963, 6325 and S.Rep. No. 989, 95th Cong., 2d Sess. 83, (1978), reprinted in 1978 U.S.Code Cong. & Admin. News pp. 5787, 5869. At most, these passages suggest Congress intended state spendthrift law to be included within the meaning of applicable nonbankruptcy law; however, nothing

in the legislative history indicates that Congress meant "applicable nonbankruptcy law" to refer exclusively to state spendthrift trust law. See Moore, at 1479.

II. THE FOURTH CIRCUIT'S INCLUSION OF THE ERISA TRANSFER RESTRICTIONS WITHIN THE MEANING OF THE TERM "APPLICABLE NONBANKRUPTCY LAW" AS USED IN § 541(c)(2) FULFILLS CONGRESS' INTENT REGARDING THE PROTECTION OF RETIREMENT BENEFITS FOR CITIZENS OF THE UNITED STATES

29 U.S.C. § 1056(d)(1) provides "[e]ach pension plan shall provide that benefits provided under the plan may not be assigned or alienated." The Fourth Circuit held this non-alienation provision enforceable in bankruptcy and Shumate's pension plan interest not includable in Shumate's bankruptcy estate. This ruling is correct for these reasons.

A. Interpreting The ERISA Transfer Restrictions As "Applicable Nonbankruptcy Law" Harmonizes ERISA And The Bankruptcy Code.

In this case, the Fourth Circuit followed its previous decision in Moore by interpreting ERISA and the Bankruptcy Code to give full effect to both statutes. Shumate v. Patterson, 943 F.2d 362, 365 (4th Cir. 1991). In Moore, the Fourth Circuit discussed the interaction of ERISA and bankruptcy law at length and as the Sixth Circuit observed in Lucas, gave full effect to the express language of both the Bankruptcy Code and ERISA. Lucas, at 603. Moreover, the Moore decision harmonized bankruptcy law and ERISA. Lucas, at 603; In re Majul, 119 B.R. 118, 123 (W.D. Tex. 1990). The Fourth Circuit thoroughly justified its ruling in light of bankruptcy and ERISA law:

> We see no evidence that Congress intended to invite a creditor to push a debtor into involuntary bankruptcy in order to reach his ERISA funds.

Because ERISA clearly prevents general creditors from reaching a debtor's interest in this ERISA-qualified trust, it constitutes "applicable nonbankruptcy law" under which restrictions on the transfer of pension interests may be enforced. "Under the plain and simple language of Section 541(c)(2), if the ERISA anti-alienation provisions are enforceable against general creditors, they are enforceable against the bankruptcy trustee."

In addition to being faithful to the language of both the Bankruptcy Code and ERISA, this conclusion furthers ERISA's broader purpose of ensuring uniform treatment of pension benefits throughout the country . . ..

We can best harmonize ERISA, the Bankruptcy Code, and the Internal Revenue Code by reading "applicable nonbankruptcy law," 11 U.S.C. § 541(c)(2), to include ERISA.

Moore, at 1480-1481 (citations omitted). This harmonious reading of the statutes was also noted and followed in Lucas, at 603, and Harline, at 675-676.

B. The Debtor's Potential Control Over The Plan Does Not Determine Whether the ERISA Transfer Restrictions Are Enforceable As "Applicable Nonbankruptcy Law."

In this case the Fourth Circuit held that Shumate's interest was excludable even though he could potentially control the pension plan. Based on the policy reasons of ERISA, the Fourth Circuit concluded that its decision did not rest on the beneficiary-settlor-trust relationship, but instead on the status of the plan as ERISA-qualified. Shumate, at 364-365. The public policy choices of Congress reflected in ERISA support this conclusion.

ERISA requires a qualified plan to have non-alienation provisions. 29 U.S.C. §

1056(d)(1); 26 U.S.C. § 401(a)(13). Both voluntary and involuntary encroachments on vested benefits are prohibited by these restrictions. General Motors Corp. v. Buha, 623 F.2d 455, 460 (6th Cir. 1980). Neither plan participants nor general creditors may reach benefits under ERISA-qualified plans. Moore, supra, at 1480. These restrictions reflect a "strong public policy against the alienability of an ERISA plan participant's benefits." Smith v. Mirman, 749 F.2d 181, 183 (4th Cir. 1984). Recently, this Court recognized this strong public policy against alienability in Guidry v. Sheet Metal Workers National Pension Fund, 493 U.S. 365, 110 S.Ct. 680, 107 L.Ed.2d 782 (1990):

> Section 206(d) reflects a considered congressional policy choice, a decision to safeguard a stream of income for pensioners (and their dependents, who may be, and perhaps usually

> are, blameless), even if that decision prevents others from securing relief for the wrongs done them. If exceptions to this policy are to be made, it is for Congress to undertake that task.

Guidry, at 493 U.S. 376 (footnote omitted).

In In re Majul, 119 B.R. 118 (Bankr. W.D. Tex. 1990), the Bankruptcy Court protected self-settled trusts based on these same policy reasons. Majul, at 118. Majul involved pension and profit sharing plans created by a professional corporation. The debtor was the sole shareholder and director of the corporation. The court held that the debtor's interests in the plans were not property of his bankruptcy estate even if the plans constituted self-settled trusts under state spendthrift law. Majul, at 124. In so deciding, the court followed the Moore decision and was heavily influenced by the

policy issues discussed in Moore and Guidry, stating that the broad construction placed on 206(d) of ERISA by this Court indicated a policy prohibition against alienation of pension benefits, rather than merely a requirement for ERISA qualification. Majul, at 121-122. The court concluded that "ERISA qualified pension plans, even if they would be settlor trusts under state spendthrift trust law, are not included within the 'property of the estate.'" Id., at 124. (emphasis added).

Given the strong public policy against alienability, no further inquiry is required to determine whether the plan trust is controlled by the debtor. Shumate, at 364-365. The status of the plan as ERISA-qualified is all that is required. Id. Even if the debtor could potentially control the plan, his interest in the plan is

protected from inclusion in the bankruptcy estate. Surely, if this Court could hold, however distasteful the result, that the public policy expressed in ERISA protects the plan interests of a confessed embezzler, see Guidry, supra, at 493 U.S. 367, 377, it should hold that the interests of an innocent debtor with potential control over the plan are also protected. See Majul, supra, at 123, n.5.

C. The Standard Set Forth In This Case Preserves The Tax Exempt Status Of ERISA-Qualified Plans, Ensures Uniform Treatment Of Retirement Benefits Throughout The United States And Encourages Businesses To Establish ERISA Plans.

The Fourth Circuit adopted the rule in Moore after a careful consideration of the effects of its decision and after closely reviewing the decisions of other courts which do not follow the Moore rule. The Moore decision leads to favorable results on several policy issues.

> First, it harmonizes the Bankruptcy Code, ERISA, and the Internal Revenue Code and gives full effect to the express language of those statutes. Second, it prevents a [qualified retirement] plan from being subject to disqualification and loss of tax-exempt status when a bankruptcy trustee seeks turnover of a single debtor's interest in a plan. Finally, it guarantees uniform treatment of [retirement] benefits throughout the country.

Lucas, supra, at 603 (citation omitted).

If the holding of Moore is reversed by this case, every ERISA-qualified plan in the country would be subject to disqualification and loss of tax-exempt status. By seeking turnover of a single bankrupt's interest in a plan, bankruptcy trustees would disqualify entire plans. When a plan's interest is included in a bankrupt's

estate, the plan's anti-assignment provisions required by 26 U.S.C. § 401(c)(13) and 29 U.S.C. § 1056(d)(1) are violated. This could lead to disqualification of every such plan and loss of tax-exempt status. See Moore, at 1480-1481; Mclean v. Central States, Southeast & Southwest Areas Pension Fund, 762 F.2d 1204, 1206 (4th Cir. 1985) (position of IRS is that payover of ERISA funds to Chapter 13 bankruptcy trustee causes the plan to lose its ERISA qualification and tax-exempt status). Furthermore, including ERISA plan interests in the bankruptcy estate would invite creditors to push debtors into involuntary bankruptcy to reach their ERISA funds. Congress certainly did not intend these results. Moore, at 1480, 1481.

The Fourth Circuit's holding in this case furthers ERISA's purpose of ensuring uniform treatment of pension benefits

throughout the country. See Moore, at 1480 citing Fort Halifax Packing Co. v. Coyne, 482 U.S. 1, 15-17, 107 S.Ct. 2211, 2219-2220, 96 L.Ed.2d 1 (1987). ERISA overrides state law in the area of employee retirement benefits and its preemption feature has been broadly construed. Harline, at 672 citing FMC Corp. v. Holliday, 498 U.S. ___, 111 S.Ct. 403, 407 112 L.Ed.2d 356 (1990).

In jurisdictions not following the Moore rule, there must be a trial almost every time a trustee asserts an interest in a retirement plan, which will result in inconsistent rulings in cases with similar facts. The Fourth Circuit intended to protect the security of employee retirement benefits from the vagaries of state spendthrift laws. Moore, at 1480. If this case is not upheld the particularities of state spendthrift law could nullify the non-alienation provisions of

ERISA. This would contradict the statutory scheme protecting ERISA from state and local laws and frustrate the goals of ERISA, contrary to its general preemption provisions. As the Tenth Circuit noted in Harline:

> We are also persuaded by the incongruity inherent in the narrower interpretation which would result in ERISA's antialienation provisions trumping state law until bankruptcy, but withdrawing that protection upon bankruptcy unless state law would give it.

Harline, at 675. See, also, Moore, at 1480; Lucas, at 603.

Finally, if ERISA plan interests are included in bankruptcy estates, many small and closely held corporations would not establish such plans. If these businesses could not place pension assets beyond the reach of creditors in bankruptcy, many plans would be

cancelled or never established. This result runs counter to the intent of Congress as noted by this Court in Connolly v. Pension Benefit Guaranty Corp., 475 U.S. 211, 106 S.Ct. 1018, 89 L.Ed.2d 166 (1986):

> In addition to prescribing standards for the funding, management, and benefit provisions of these plans, ERISA also established a system of pension benefit insurance. This "comprehensive and reticulated statute" was designed to ensure that employees and their beneficiaries would not be deprived of anticipated retirement benefits by the termination of pension plans before sufficient funds have been accumulated in the plans. . .. Congress wanted to guarantee that "if a worker has been promised a defined pension benefit upon retirement-and if he has fulfilled whatever conditions are required to obtain a vested benefit-he will actually receive it."

Connolly, 475 U.S. at 214, 106 S.Ct. at 1029 (quoting Pension Benefit Guaranty Corp. v. R.A. Gray & Co., 467 U.S. 717, 720, 104 S.Ct. 2709, 2713, 81 L.Ed.2d 601 (1984) (citation omitted)).

CONCLUSION

Under Moore and its progeny, Shumate's interest in the plan is not an asset of his bankruptcy estate. The clear language of the Bankruptcy Code indicates that ERISA constitutes "applicable nonbankruptcy law." The Fourth Circuit's holding of ERISA as "applicable nonbankruptcy law" fulfills the public policy considerations expressed by Congress and clearly establishes that interests in ERISA-qualified plans are not part of a debtor's bankruptcy estate. Therefore, this Court should affirm the Fourth Circuit and hold that Shumate's interest in

the plans are not assets of his bankruptcy estate.

Respectfully submitted,

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PROOF OF SERVICE

I, David H. Adams, counsel for Amicus Curiae and a member of the bar of the Supreme Court of the United States, hereby certify that three (3) true copies of the foregoing Motion for Leave to File Brief Amicus Curiae and Brief for Ronald J. Wyles and Regina L. Wyles as Amicus Curiae in Support of Respondent were mailed, first class postage prepaid, to James R. Sheeran, Esquire, Post Office Drawer 69, Portsmouth, VA 23705; Debera F. Conlon, Assistant U.S. Trustee, Room 433, Federal Building, 200 Granby Mall, Norfolk, Virginia 23510; Robert A. Lefkowitz, Esquire, Maloney, Yeatts & Barr, P.C., 600 Ross Building, 801 East Main Street, Richmond, Virginia 23219-2906; and G. Steven Agee, Esquire, Osterhoudt, Ferguson, Natt, Aheron & Agee, P.C., 1919 Electric Road, S.W., Roanoke,

Virginia 24018 on this 31st day of March, 1992.

David H. Adams

AFFIDAVIT FOR PROOF OF FILING

I, David H. Adams, counsel for Amicus Curiae and a member of the bar of the Supreme Court of the United States, hereby certify that I hand delivered by courier to the Clerk of the Supreme Court of the United States within the time allowed for filing, the foregoing Motion for Leave to File Brief Amicus Curiae and Brief for Ronald J. Wyles and Regina L. Wyles as Amicus Curiae in Support of Respondent on March 31st, 1992.

David H. Adams

Signed and sworn before me, at Virginia Beach, Virginia, this 31st day of March, 1992.

Patricia L. Hise
Notary Public

My Commission expires: 5/30/95